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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-675

JOAN T. NORMAND,
Defendant-Petitioner,

versus

STATE OF LOUISIANA,
Plaintiff-Respondent.

BRIEF OF RESPONDENT

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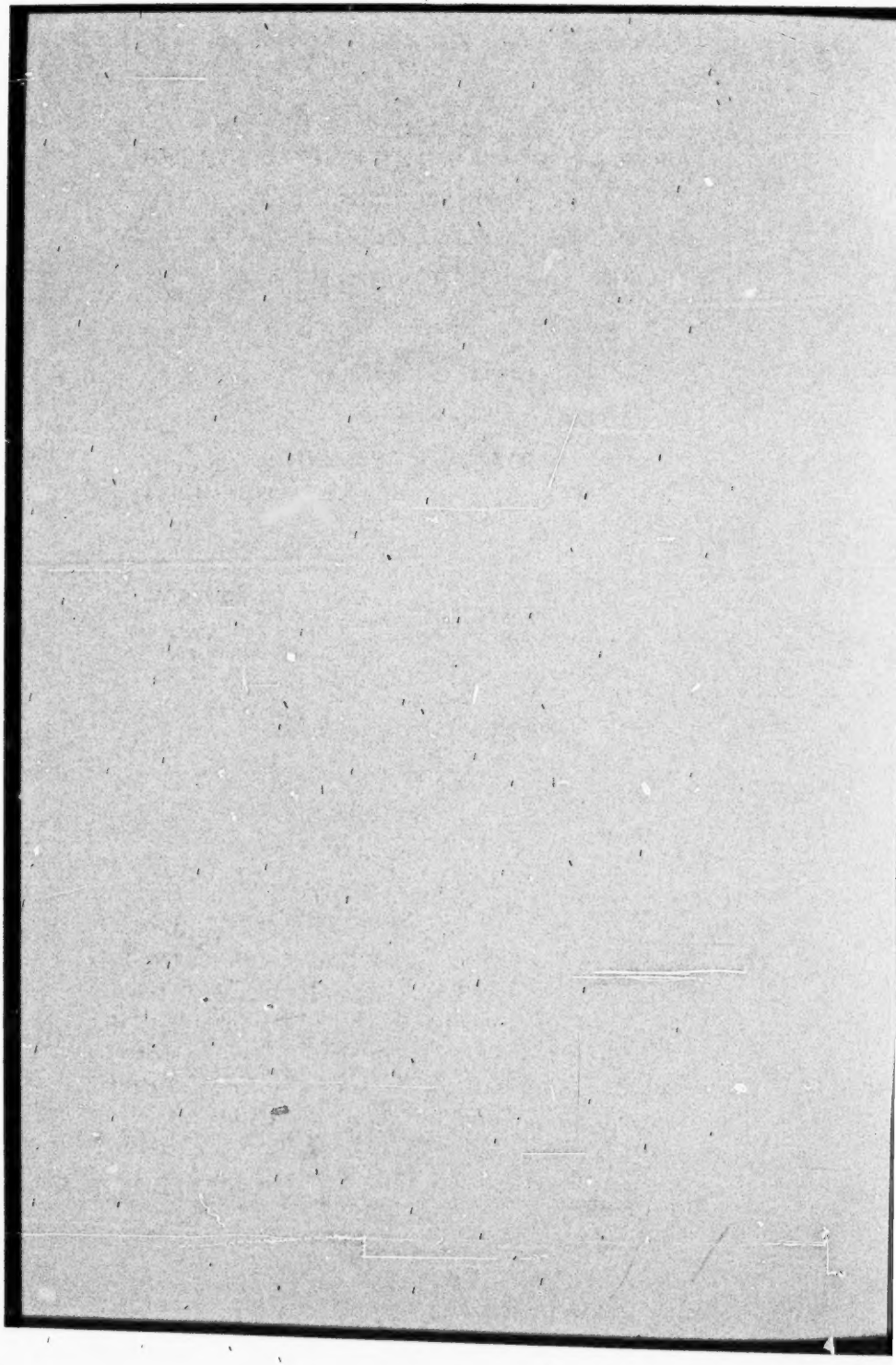

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STATEMENT OF THE CASE

Early on the afternoon of July 9, 1973, Joan T. Normand fired five (5) shots into the person of her common-law husband, Robert I. Jennings, with a pistol, thereby causing his death. Petitioner was subsequently indicted by the Rapides Parish Grand Jury for the offense of Second Degree Murder. On October 10, 1973, a twelve man jury unanimously found her guilty of that charge. The petitioner then appealed her conviction to the Louisiana Supreme Court and on July 1, 1974, that Court affirmed her conviction and thereafter denied her application for rehearing on August 30, 1974. Throughout the proceedings, the petitioner insisted that Article 7, Section 41 of

the Louisiana Constitution of 1921 and Article 402 of the Louisiana Code of Criminal Procedure were unconstitutional and deprived her of her right to due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States. These provisions of state law provide, of course, for the exemption of persons of the female sex from jury service unless they previously file with the Clerk of Court a written declaration of desire to be subject to jury service. These provisions are set forth in full in the petition filed herein.

The identical questions have been presented to this Court in the cases of *Healy v. Edwards*, No. 73-759 on the docket of this Court and *Taylor v. Louisiana*, No. 73-5744 on the docket of this Court. It is respectfully submitted that since these cases involve the identical issue in question in this matter, that the Court should forego action on this petition until the decisions are rendered in the *Healy* and *Taylor* cases. Action on this petition would only result in a duplication of the efforts in those cases. Because the identical issue is presented in *Healy v. Edwards* and *Taylor v. Louisiana, supra*, this brief will be limited to a short discussion of the issues presented by the petition. This issue surely has been thoroughly briefed and discussed in oral argument in *Healy* and *Taylor*. Though it will not be discussed in this brief, the respondent would like to specifically call the Court's attention to the argument presented in the supplemental brief of the appellants in *Healy v. Edwards*, No. 73-759, discussing the issue of mootness, which has been argued before the Court.

ARGUMENT

In 1961, in *Hoyt v. Florida*, 368 U.S. 57, 82 S.Ct. 159, this Court decided a challenge to the constitutionality of a Florida statute which contained the exact same provisions as the Louisiana Constitution and Code of Criminal Procedure presently contain. Petitioner asserts that the *Hoyt* case turned on a narrow issue and attempts to distinguish it on this basis. An examination of *Hoyt* will reveal that this view is clearly erroneous. In *Hoyt*, the Court framed the issue as follows:

> "Where, as here, an exemption of a class in the community is asserted to be in substance an exclusionary device, the relevant inquiry is whether the exemption itself is based on some reasonable classification and whether the manner in which it is exercisable rests on some rational foundation." 368 U.S. at 61.

The broad holding of the Court was:

> "In neither respect can we conclude that Florida's statute is not 'based on some reasonable classification' and that it is thus infected with unconstitutionality." 368 U.S. at 61.

> "But we cannot regard it as irrational for a state legislature to consider preferable a broad exemption, whether born of the state's historic public policy or of a determination that it would not be administratively feasible to decide in each individual instance whether the family respon-

> sibilities of a prospective female juror were serious enough to warrant an exemption. . . .
>
> Likewise, we cannot say that Florida could not reasonably conclude that full effectuation of this exemption made it desirable to relieve women of the necessity of affirmatively claiming it, while at the same time requiring of men an assertion of the exemptions available to them." 368 U.S. at 63, 64.

The Court dismissed the appellant's argument with reference to the fact that only two hundred twenty (220) women out of approximately forty-six thousand (46,000) registered female voters in the county had volunteered for jury duty, citing *Hernandez v. Texas*, 347 U.S. 475, 74 S.Ct. 667. The Court indicated that circumstances or chance could well have prevented individuals who were members of that class (women) from serving on particular juries or during a particular period of time. The Court squarely held that the statute as written was not offensive to the Fourteenth Amendment.

In *Hoyt*, there was also an attack on the statute as applied to this particular defendant. This involved the action of the jury commissioners in attempting to avoid listing women for jury service who though they might be registered for service, might be disqualified for other reasons. There is nothing in the record in the instant matter to demonstrate that the action of any such officials contributed to the disproportionate number of men on the jury panel. In fact, the stipulation between the State of Louisiana and the defendant, beginning on Page 32A, Appendix G of the petition, states in paragraph 6:

> "It is further stipulated that the disproportionate number of women appearing on the Rapides Parish General Venire and Petit Jury Venire and the complete absence of women from the Grand Jury Venire, Grand Jury, and Petit Jury in the captioned case resulted from the adherence by the Rapides Parish Jury Commission to Article 7, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure."

Therefore, the defendant-petitioner has stipulated to the fact that the disproportion results from the operation of the statutes and not from the action of any administrative officials.

The Court, at 368 U.S. 60, passed up the opportunity to rule on the present validity of the ancient dictum in *Strauder v. West Virginia,* 100 U.S. 303, 25 L.Ed. 664, 1880, that a state may constitutionally preclude women from jury service altogether and include only males as members of the jury.

Hoyt did not turn on a narrow issue. The opinion considered a broad range of attack on a statute identical to the one in question in this case and found it within the limitations of the Fourteenth Amendment.

In *Healy v. Edwards,* 363 F.Sup. 1110, U.S. District Court, Eastern District of Louisiana, 1973, Judge Rubin reasoned that on the basis of *Reed v. Reed,* 404 U.S. 171, 92 S.Ct. 251 (1971), and *Frontiero v. Richardson,* 411 U.S. 677, 93 S.Ct. 1764 (1973), that *Hoyt v. Florida, supra,* was

no longer valid authority. At page 1117 of the opinion, he stated:

> "When today's vibrant principle is obviously in conflict with yesterday's sterile precedent, trial courts need not follow the outgrown dogma."

Reed and *Frontiero* both deal with factual situations in which a class of persons, that is, females, is accorded different treatment on the basis of criteria which was completely unrelated to the objectives of the statutes in question in those particular cases; that is, the use of the sexual classification was arbitrary and unwarranted. In *Reed,* an Idaho statute granting preference to individuals as administrators of estates was struck down and in *Frontiero,* the right of a member of the uniform services to claim their spouses as dependents for the purpose of obtaining additional military benefits was involved. The ruling in both of those cases was that there was not a reasonable classification under the Fourteenth Amendment. The ruling in *Hoyt,* by the Supreme Court of the United States, was that there was a reasonable classification involved. In fact, the principles enunciated in *Reed v. Reed* and *Frontiero v. Richardson* are nothing more than the same principles which have been enunciated by this Court for many years under the equal protection clause of the Fourteenth Amendment of the United States Constitution. It is questionable whether *Reed v. Reed, supra,* and *Frontiero v. Richardson, supra,* present a "vibrant principle" which undermine the ruling of the "sterile precedent" in *Hoyt v. Florida, supra.*

Judge Rubin proceeds to discuss the objectives of the legislation with reference to these sexual classifications and states, 363 F.Sup. at 1114:

> "The objective of the state legislation here attacked is the method of selecting juries. The state does not contend that there is any difference between males and females with respect to their qualifications or competency as jurors."

It is submitted that the Court mistakes the objectives of the legislation. The objectives of the legislation are clearly narrower than stated. The statute does not define jury qualifications, nor the compentency of persons to sit as jurors. The objectives of the legislation and the rationale therefor are thoroughly discussed in the case of *Hoyt v. Florida* and will not be repeated here. We would, however, incorporate that argument by reference here and represent to the Court that it more than adequately answers the questions raised by Judge Rubin in his opinion. Judge Rubin then further goes on to discuss the cases involving racial classifications and jury service which were specifically distinguished by the Court in *Hoyt v. Florida, supra.*

The case of *Thiel v. Southern Pacific Company*, 328 U.S. 217, 66 S.Ct. 984 (1946), a decision prior to the decision in *Hoyt v. Florida, supra*, involved a situation where the Clerk of Court and the jury commissioners excluded completely, wage-earners from all jury panels selected in that particular district. The holding is limited to the facts of the case because an administrative practice of the local court was involved and no legal provision was questioned.

Petitioner also cites *Ballard v. United States*, 329 U.S. 187, 67 S.Ct. 261 (1946), also decided prior to *Hoyt v. Florida, supra*, in which women were not included in the panels of grand and petit jurors in the southern district of California where Ballard's indictment was returned and where his trial was conducted. At that time, Congress had provided, in 28 U.S.C. 411, that Federal court jurors were to have the same qualifications as those required by the highest court of the state in which the United States District Court was situated and at that time, women were eligible in California for jury service according to the provisions of the California Code of Criminal Procedure Article 198. The administrative action in *Ballard* clearly violated the California statutory law which was made the law of the United States by act of Congress. No constitutional issue was presented in the *Ballard* case, nor was any decided.

It is interesting to note that in a footnote in *Hoyt v. Florida*, 368 U.S. at 60, the Court discussed the rationale of the Civil Rights Act of 1957 in which Congress adopted its own qualifications for Federal jury service independent of state law altogether. The Court noted there:

> "There is no indication that such congressional action was entailed by constitutional considerations."

CONCLUSION

It is clear that there is no legal authority, at the present time, for granting the relief sought, either in this case, in *Healy v. Edwards, supra*, or in *Taylor v. Louisiana, supra*. In order to grant the relief sought in any of these

three cases, this Court must directly and squarely overturn the decision of this Court in *Hoyt v. Florida, supra,* and invalidate provisions of state law which it found to be constitutionally permissible in the year 1961. Only thirteen (13) short years ago, this Court stated, 368 U.S. at 61:

> "Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a state, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she, herself, determines that such service is consistent with her own special responsibilities."

Can it now be said that the passage of such a brief period of time has made this consideration decadent?

Respectfully submitted,

STATE OF LOUISIANA

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CERTIFICATE

I hereby certify that I have mailed a copy of the above and foregoing brief to the law firm of Gravel, Roy & Burnes, P. O. Box 1792, Alexandria, Louisiana, 71301, by placing a copy of same in the United States Mail, postage prepaid, on this the ____ day of December, 1974.

EDWIN O. WARE